HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2793 OF 2005.

Sudarshan Bapurao Ghadge. ...Applicant.

V/s.

The State of Maharashtra. ...Respondent

Shri C.K.Pendse, for applicant.

Shri A.S.Gadkari, APP for respondent.

CORAM: A.M.KHANWILKAR,J
DATE : APRIL 29, 2005

P.C. :-

1. Heard counsel for the parties.

2. This petition takes exception to the order passed by the Additional Sessions Judge dated 5th February, 2005, rejecting the applicant's application for altering charge from section 304(II) of the I.P.C to 323 of I.P.C.. The court below has rejected that prayer for reason, as can be discerned from paragraph 6 of the Judgment, relying on the evidence on record, in the form of Statement of P.W.1.

3. To get over this position, the learned counsel for the applicant places reliance on the medical

certificate at page-18 which indicates that the cause of death was due to Mycarctial Infarction(Natural). It is argued that the version of P.W.1 is not supported by the medical evidence as well as the contents of letter dated 7th September, 2001, which would indicate that the possibility of death was due to coronary Artery Block. It is contended that there is no legal evidence to show that the cause of death was due to assault inflicted by the applicant on the chest portion of the deceased.

4. This submission, however, overlooks the case of P.W.1 that the applicant was fully aware and had knowledge that her deceased husband was heart patient and inspite of that knowledge, the applicant assaulted her husband and gave fist blows on the chest of her husband with full force, which resulted in death of the deceased, before he could be treated by the Doctor. This version of the P.W.1, whether can be supported by the medical evidence is a matter for trial. As of now, there is evidence to apply section 304(II) of the I.P.Code. That evidence cannot be said to be inadmissible or which can be discarded at this stage. If it is so, no fault can be found with the conclusion reached by the lower court in rejecting the application preferred by the applicant.

5. The counsel for the applicant however, placed reliance on the decision of the Apex Court in the case of **Pirthi V/s State of Haryana, reported in AIR 1994 Supreme Court 1582**, to contend that mere giving fist blows on the chest portion of the deceased cannot be said to be direct cause of death, so as to attract the offence under section 304(II), but at best will be offence under section 323 of the I.P.C. The submission however, overlooks the fact that the case before the Apex Court was after fulfledged trial and parties had adduced evidence in support of their respective stand. On appreciating of that evidence, the Apex court has recorded finding of fact that injury to testicles was not direct cause of death. That stage has not arisen in the present case, so far. If it is so, the decision pressed into service, is of no avail to the applicant.

6. It was next contended by the learned counsel for the aplicant that the applicant will suffer prejudice. In as much as, if at the end of the trial, trial court was to take a view that offence under section 323 of the I.P.C. was attracted, which being non-cognizable offence, the trial could not have proceeded against the applicant without taking sanction of the competent authority. This submission does not commend to me.

There is ample power in the court invested by the provisions of Criminal Procedure Code to deal with that situation.

7. For the time being, suffice it to observe that the application preferred by the applicant has been rightly rejected by the trial court. Dismissed.